IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8942 OF 2003

Smt. Kanchandevi S. Jain ... Petitioner

V/s

Gajanan Dattaram Deolekar & anr. ... Respondents

ALONGWITH
WRIT PETITION NO. 8943 OF 2003

Roopchand Harakchand Jain ... Petitioner

V/s

Gajanan Dattaram Deolekar & anr. ... Respondents

Mr. K.K.V. Kurup for the petitioner in both petitions.
Mr. P.S. Dani for the respondents in both petitions.

CORAM: P.V. KAKADE, J.

DATED: 10TH APRIL, 2006

P.C.:

1. Heard learned counsel for both parties in both petitions. Both petitions can be disposed of by this common order as the landlord is the same and the petitioners are two tenants of the common landlord.

2. The petitioner in Writ Petition No. 8942 of 2003 has impugned the order passed by the learned appellate Court dismissing the appeal and confirming the judgment

and order passed by the Trial Court dated 23.7.2001 making the Int. Notice No. 303 of 2000 in R.A.E. & R. Suit No. 257/727 of 1998 absolute and the petitioner in Writ Petition No. 8943 of 2003 has impugned the order passed by the learned appellate Court dismissing the appeal and confirming the judgment and order passed by the Trial Court dated 23.7.2001 making the Int. Notice No. 304 of 2000 in R.A.E. & R. Suit No. 258/728 of 1998 absolute.

3. The respondent plaintiffs who are landlords had taken out the notice for order directing the defendant to pay the arrears of rent, permitted increases, other outgoings and common benefits as per the particulars of the claim given in the application. The respondent plaintiffs further submitted that the petitioner-defendant be directed to pay further society charges and common benefits on pro-rata basis as per the actual bills received by the plaintiffs. It is further prayed that the future monthly rent be fixed at the rate of Rs.656/- per month and the defendant be directed to deposit the same every month on or before 10th of each month. It is also prayed that the plaintiffs be allowed to withdraw the amount as and when deposited. The respondent plaintiffs have filed the suit for possession

of the defendant's premises on the grounds mentioned therein and the defendant is liable to pay the rent amount. However, he remained in arrears of rent and permitted increases from November, 1997 and failed to pay it inspite of demand notice dated 15.5.1998. Under the circumstances, said notices were taken out.

The petitioner defendant contested the application on various grounds inter-alia denying the liability to pay the said amount on the ground that the landlord was trying to extract undue money from them. It was submitted that the demands made by the plaintiffs were unreasonable as well as illegal, such as, light charges, sweeper charges, etc. and on such and other grounds, the application was sought to be dismissed.

4. The learned Trial Judge, after hearing both parties, came to the conclusion that the petitioner defendant was liable to pay the amount as per the particulars given in Exh.A annexed to the application. It was further observed that, even if there is undue recovery of the amount by the plaintiffs, the amount is to be accepted without prejudice to the rights of the parties and in case it is established that the plaintiffs have recovered excessive amount then payable to them, then

the said amount can be adjusted in the decretal amount if the decree is passed and hence the order is passed making the notice absolute to the effect that the petitioner should pay an amount of Rs.51,165/- and deposit it in the Court towards arrears of rent and permitted increases upto July, 2001 within a particular time and it was further directed to deposit the amount of Rs.656/- p.m. in the Court on or before 10th day of each month from August, 2001 till the disposal of the suit. It was clarified that the amount would be accepted without prejudice to the rights of parties and the plaintiffs were allowed to withdraw the amount of deposit as and when deposited.

5. Respective appeals were carried against the said order. The appellate Court, after hearing both parties and on the basis of evidence on record, dismissed the respective appeals and hence the present petitions.

6. Pending the petitions, this Court by order dated 8.2.2005 in Civil Application No. 245 of 2005 in Writ Petition No. 8942 of 2003 and Civil Application No. 246 of 2005 in Writ Petition No. 8943 of 2003 which were for stay of the impugned order, directed the petitioners to pay and deposit the amount of Rs.51,165/-

in respective applications in the Court. It was also observed that the petitioners had already deposited the amount of Rs.20,000/- each in the Trial Court and, therefore, it was directed that on petitioners depositing another sum of Rs.15,000/- each in the Trial Court, the order would stand stayed pending the petition.

7. On this back ground, the learned counsel for the petitioner submits that the impugned orders in both petitions are totally unreasonable and illegal as the amount demanded by the landlord are much in excess with the amounts which would be found due. Moreover, it was submitted that under such circumstances, the orders passed in both petitions could not survive as the notices moved in both matters were illegal.

8. However, if we peruse the orders passed in both petitions, both the Courts below have come to the conclusion that the amounts would be accepted without prejudice to the rights of parties and in case it is established the plaintiffs have recovered excess amount then payable to them, the said amount would be adjusted in the decree. If this is the position, then this Court would not be justified in intervening in the said

matters where the lower Courts appear to have used judicial discretion in passing the order.

9. Be that as it may, the concurrent findings recorded by both the Courts below are found to be legal and proper and hence, I am of the considered view that the present petitions are beyond the scope of writ jurisdiction of this Court as contemplated under Art. 227 of the Constitution of India and, as such, deserve to be dismissed. Hence, both petitions are dismissed.

The petitioners shall deposit the remaining amounts after deducting the amounts which are already deposited in the Trial Court as per the directions given by this Court by order dated 8.2.2005.

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